

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2004P00358WOUS			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ eFiled Signature _____ Typed or printed name _____	Application Number 10/592,969	Filed 06/25/2008			
	First Named Inventor Silvia Gerstner et al.				
	Art Unit 3637	Examiner Daniel J. Rohrhoﬀ			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. 62,246 Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></td><td style="width: 50%; vertical-align: top; border-left: 1px solid black; padding-left: 10px;"><p>/Andre Pallapies/ _____ Signature Andre Pallapies _____ Typed or printed name 252-672-7927 _____ Telephone number March 23, 2012 _____ Date</p></td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 62,246 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>	<p>/Andre Pallapies/ _____ Signature Andre Pallapies _____ Typed or printed name 252-672-7927 _____ Telephone number March 23, 2012 _____ Date</p>
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<input type="checkbox"/> *Total of _____ forms are submitted.					

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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**STATEMENT OF ARGUMENTS
FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Appellants submit this Statement of Arguments in support of their Pre-Appeal Brief Request for Review and Notice of Appeal filed herewith.

Overview

Claims 10-26 are pending in this application with claims 10, 18 and 20 being independent. Claims 18, 19, 25 and 26 are withdrawn from consideration.

Amendment D amended withdrawn claim 18 to include all of the features of claim 10. Upon allowance of claim 10, Appellants request rejoinder and allowance of claims 18, 19, 25 and 26.

The January 30, 2012, Final Office Action rejected claims 10, 20, 21 and 24 as obvious in view of U.S. Patent Application Publication No. 2003/0020385 to Leimkuehler et al. in view of U.S. Patent No. 1,967,666 to Fisher; and rejected claims 11-17, 22 and 23 as obvious over Leimkuehler in view of Fisher and U.S. Patent No. 3,233,644 to Bono. The rejections should be withdrawn for at least the following reasons.

A. Claims 10, 20, 21 and 24 (Leimkuehler and Fisher)

The Office Action rejected claims 11-30 under 35 U.S.C. §103(a) as being unpatentable over Leimkuehler in view of Fisher. Appellants respectfully traverse the rejection.

Initially, Appellants respectfully submit that Fisher is not available to the Examiner for use in a rejection because Fisher is clearly non-analogous art. (Amendment D, pages 9-10).

Indeed, the citation of Fisher is a clear case of the use of impermissible hindsight reconstruction. (Amendment D, pages 10-11).

Further, Appellants submit that, without the teachings of the present application, there would have been no reason to combine the sheet metal strip and body member construction of Fisher with the bucket of Leimkuehler. As stated above, Leimkuehler discloses no recognition of any benefit to providing an outer metal strip over an inner member. Fisher does not mention refrigerator buckets and only provides a solution for protecting the edge of a glass table top.

Even if it were permissible to combine features of Fisher with the refrigerator of Leimkuehler (and Appellants reiterate that it is not), the claimed invention would not result.

Claim 10 includes the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration.

The office action defined metal jacket (sheet metal strip 6) of Fisher does not hold the office action defined core (body member 2, 3, 4, 5) of Fisher in any configuration, much less a curved configuration. Appellants could find nothing in Fisher that says that the configuration of body member 2, 3, 4, 5 is in anyway held by sheet metal strip 6. It appears from Fisher that body member 2, 3, 4, 5 is bent into the configuration shown in Figs. 2 and 3 before sheet metal strip 6 is attached to it. Appellants could find nothing in Fisher that suggests that body member 2, 3, 4, 5 would not keep its configuration without being held in that configuration by sheet metal strip 6. As a result, the configuration of body member 2, 3, 4, 5 is not held by sheet metal strip 6. Further, body member 2, 3, 4, 5 of Fisher is described in Fisher as “steel or the like” (page 1, lines 37-38). Appellants could find nothing in Fisher that disclosed or even suggested that body member 2, 3, 4, 5 is made of plastic or that sheet metal strip 6 would be strong enough to hold a plastic body member in a curved configuration.

Claim 20 includes the feature of a strip including a plastic core and a metal jacket holding the plastic core on the curved edge of the compartment.

Body member 2, 3, 4, 5 of Fisher is described in Fisher as “steel or the like” (page 1, lines 37-38). Appellants could find nothing in Fisher that disclosed or even suggested

that body member 2, 3, 4, 5 is made of plastic or that sheet metal strip 6 would be strong enough to hold a plastic body member on the curved edge of a compartment.

Trim piece 18 of Leimkuehler is fixed to container 20 by energy director 32 during ultrasonic welding. Appellants submit that it would not have been obvious to add to the ultrasonic welding of Leimkuehler a metal jacket that holds trim piece 18 to container 20. Further, it is unclear how the configuration of Fisher could hold trim piece 18 to container 20. Because the configuration of Fisher is nothing like the configuration of Leimkuehler, Appellants submit that it would not have been obvious from the combination of Leimkuehler and Fisher how a metal jacket can hold trim piece 18 on container 20. Fisher shows sheet metal strip 6 and body member 2, 3, 4, 5 attached to a flat end of a table top 1. In contrast, container 20 of Leimkuehler does not have a flat edge to which trim piece 18 is attached. It is unclear how sheet metal strip 6 of Fisher could hold the irregularly shaped trim piece 18 of Leimkuehler to container 20. If the Office Action is merely asserting that it would have been obvious to cover trim piece 18 with sheet metal strip 6, then Appellants submit that such a covering application would not result in sheet metal strip 6 holding trim piece 18 to container 20, as required by claim 20.

The Office Action (pages 8-9) asserts that sheet metal strip 6 of Fisher holds body member 2, 3, 4, 5 in a curved configuration and points to col. 1, lines 35-40, of Fisher for support. Appellants disagree with this assertion. The cited passage of Fisher merely states that sheathing serves to secure the frame structure to the panel. Fisher says nothing about the sheathing holding a core in a curved configuration, as required by claims 10, 18 and 21.

In view of the foregoing, Appellants respectfully submit that the combination of Leimkuehler and Fisher does not teach or suggest the features of claims 10, 20, 21 and 24 and, therefore, rejection under 35 USC §103(a) is inappropriate. As a result, Appellants respectfully request withdrawal of the rejection.

B. Claims 11-17, 22 and 23 (Leimkuehler, Fisher and Bono)

The Office Action rejected claims 11-17, 22 and 23 under 35 U.S.C. §103(a) as being unpatentable over Leimkuehler in view of Fisher and Bono. Applicant respectfully traverses the rejection.

Bono does not remedy the deficiencies of Leimkuehler and Fisher.

As explained above, the combination of Leimkuehler and Fisher does not teach or suggest the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration.

Indeed, the Examiner does not allege that Bono teaches or suggests the feature of a strip including a plastic core and a metal jacket holding the plastic core in a curved configuration, as recited by claim 10, from which claims 11-17, 22 and 23 depend.

In view of the foregoing, Appellants respectfully submit that the combination of Leimkuehler, Fisher and Bono does not teach or suggest the features of claims 11-17, 22 and 23 and, therefore, rejection under 35 USC §103(a) is inappropriate. As a result, Appellants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the above, Appellants respectfully request allowance of claims 10-26.